

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure Lower Taxes: This bill creates collection fee of up to 33 percent, paid by taxpayers, on top of unpaid personal property taxes, penalties, and costs.

B. EFFECT OF PROPOSED CHANGES:

Current Situation:

Tax collectors have the authority to collect all taxes shown on the tax rolls by the date of delinquency. Taxes are due and payable on November 1st of each year, or as soon as the certified tax roll is received by the tax collector. Taxes become delinquent on April 1st of the following year in which they are assessed, or 60 days from the mailing of the original notice, whichever is later. If the delinquency date for ad valorem taxes is later than April 1st of the year following the assessment on which taxes are due, all dates or time period regarding the collection of, or administrative procedures regarding the collection of, delinquent taxes shall be extended a like number of days.¹ If taxes become delinquent, the tax collector may collect delinquent taxes, interests, and costs, by sale of tax certificates on real property and by seizure and sale of personal property. Costs include the publication of notices and reasonable attorney fees and court costs in proceedings to recover delinquent taxes.²

Before May 1st of each year following the assessment, the tax collector prepares a roll of all unpaid personal property taxes. Prior to April 30th of the next year, the tax collector shall prepare warrants against the delinquent taxpayers. The warrants allow for the levy upon, and seizure of, tangible personal property. Within 30 days after preparing the warrants, the tax collector files a petition in the circuit court for the county they serve in. The petition describes the levies and nonpayment of taxes, the issuance of warrants, proof of publication of notices, and the names and addresses of all taxpayers who failed to pay taxes. There is one petition naming multiple delinquent taxpayers. The petition prays for an order ratifying and confirming the warrants, and directing the tax collector to levy upon and seize the personal property of all delinquent tax payers to satisfy payment of unpaid taxes.³

Upon filing a petition with the court, the tax collector must request the earliest time for a hearing, and the clerk of court shall notify each delinquent taxpayer listed in the petition that a petition is filed and, if ratified, warrants will be issued and their property will be seized and sold to pay unpaid taxes, plus costs, interest, attorney's fees, and other charges.⁴

The tax collector is authorized to employ counsel to conduct such suits. They may agree upon counsel's compensation, which may come out of the general office expense fund and be included in their budget.⁵ These fees are allowed to be collected from delinquent taxpayers by adding them to the unpaid taxes.

Effect of Bill:

This bill requires the original tax notice to inform the taxpayer that any delinquent tangible personal property tax, penalty, and interest may be referred to contract legal counsel for collection. Additionally, the notice must inform the taxpayer of the contract counsel's compensation, and that it and certain

¹ Section 197.333, F.S.

² Section 197.332, F.S.

³ Section 197.413(2), F.S.

⁴ Sections 197.413(4), (5), F.S.

⁵ Section 197.413(3), F.S.

other costs, including court and advertising costs, will be added to the amount owed on delinquent taxes.

The bill provides the option to turn delinquent taxes on tangible personal property rendered unavailable for seizure into a personal liability. The owner can potentially become personally liable for any unpaid personal property taxes owed on tangible personal property that has been sold, removed from the county, or otherwise rendered unavailable for seizure. This subjects the owner of property with delinquent personal property taxes to a civil action for debt collection. Under current law, the tax collector can seize and then sell the personal property for satisfaction of the taxes owed. This bill will hold the property owner personally liable as well, giving the tax collector, and anyone with an interest in the debt, which would include contract counsel, a separate collection tool aimed at other assets than just the tangible personal property.⁶ The bill provides for this collection method in attempting satisfaction of delinquent taxes, whether penalties and interests are to be included in this personal debt is unclear as they are not listed out as they are elsewhere in the bill. Also, under current law, a tax collector has seven years from the date of issuance of a warrant to collect, after which the warrant is barred and no action may be maintained in court.⁷ This statute of limitations would not apply if the lien was changed into a personal debt.

The bill also expands the tax collectors ability to use legal counsel in collecting unpaid taxes. The bill specifies that the tax collector may retain in-house counsel or, may contract with outside counsel to collect by suit, or other means, all delinquent tangible personal property taxes, penalties, and interest. The bill authorizes the amount of the outside counsel's compensation, which is not to exceed 33 percent of the total of delinquent taxes, penalties, and interests, to be added to all accounts referred to the attorney for collection.

C. SECTION DIRECTORY:

Section 1: Amends s. 197.333, F.S., forming sub-sections (1) and (2), and sub sub-sections (a) and (b), to require additional information in tax notices regarding contract counsel and their compensation.

Section 2: Amends s. 197.413 to create a personal liability for unpaid taxes unavailable for seizure and provide contract counsel with a maximum collection fee.

Section 3: Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Operational Impact is to be determined by the Department of Revenue.⁸

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See fiscal comments below.

⁶ E-mail from Glenna Hodge, Partner and Director of Governmental Affairs, Linebarger Goggan Blair & Sampson, LLP, March 21, 2006.

⁷ Section 197.416, F.S.

⁸ Department of Revenue Bill Analysis, HB 1609.

2. Expenditures:

See fiscal comments below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill creates a maximum compensation fee for outside legal counsel of 33 percent of the total amount of taxes, penalties, and interests collected to be added to all accounts referred for collection.

D. FISCAL COMMENTS:

The bill provides a tax collector and legal counsel an additional method of collecting unpaid taxes on tangible personal property rendered unavailable for seizure by giving them the option to turn the unpaid taxes into a personal debt, rather than a lien on the property. By making this a personal debt, collection can be undertaken in a civil action.

The bill authorizes the amount of the outside counsel's compensation, which is not to exceed 33 percent of the total of delinquent taxes, penalties, and interests, to be added to all accounts referred to the attorney for collection. With an 18 percent interest rate per year⁹ from the date of delinquency, and an additional 33 percent of the total of unpaid taxes, penalties, and interest, a taxpayer, within a year, can potentially be personally liable for more than an additional 50 percent of what was originally owed.

Also, by basing the legal counsel's compensation on the total of unpaid taxes, penalties, and **interest**, an incentive may be created for delaying the collection of taxes because as the interest accumulates, the counsel's compensation increases.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Comments:

Clarity is needed regarding whether the personal liability is to extend to only the unpaid taxes, or if it is to include interests and penalties as well.

Other Comments:

⁹ Section 197.172(3), F.S.

Opponents: The Florida Tax Collectors Association, Inc., opposes the bill. It is their position that tax collectors are already able to use legal counsel, the fees of which can already be added to the delinquent amounts. There is also concern with changing the lien on property into a personal debt and whether this is constitutional.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Council on Local Government adopted one-strike all amendment on March 29, 2006. The amendment provides for the additional information in the tax notices, creates the option of unpaid taxes on tangible property rendered unavailable for seizure being turned into a personal debt, and authorizes compensation of up to 33 percent of unpaid taxes, penalties, and interests to be added when referred to an attorney for collection. The amendment also changed the effective date of the bill. The bill, as amended, was reported favorably with committee substitute.